IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.OPC No.1 of 2007.

Date of decision:18.12.2007

Court on its own motion ....Petitioner

-Versus-

Upinder Thakur ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge

Whether approved for reporting? No

For the Petitioner: Mr.M.S.Chandel, A.G. with Mr.R.M.Bisht, Dy.A.G.

For Respondent: Mr.R.L.Sood, Senior Advocate with Mr.Arjun Lal, Advocate alongwith contemner in person.

Deepak Gupta, J.(Oral)

On 21.6.2007 this Court had initiated the aforesaid criminal contempt proceedings against the respondent on the receipt of a letter addressed to the Registrar General of this Court by the Civil Judge (Junior Division)-cum-SDJM, Dalhousie, District Chamba. We had passed the following order:

> "21.6.2007: Present: Court on its own motion.
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> The learned District and Sessions Judge, Chamba, Chamba Division has sent a communication dated 18th June, 2007 to the Registrar General of this Court. Alongwith this communication, he has enclosed a letter sent by the Civil Judge (Junior Division)-cum-SDJM, Dalhousie, District Chamba, addressed to the Registrar General and sent through proper channel i.e. through the District and Sessions Judge, Chamba.
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> The Civil Judge (Junior Division)-cum-SDJM in his letter has informed that on 17.6.2007, at about 1.00 p.m., Shri Upinder Thakur, Superintendent of Police, District Chamba, telephoned the Judicial Officer and asked him not to grant bail to the accused in FIR No.68/07, titled as State v. Babu Ram and others. According to the Judicial Officer, when he told the Superintendent of

Police that the matter would be decided as per the record, the Superintendent of Police threatened him to face dire consequences in case the bail is granted in the said case.

On the aforesaid communication being placed before one of us (Deepak Gupta, A.C.J.) on the administrative side, it has been ordered that the same be registered as a criminal contempt petition.

A perusal of the letter sent by the Judicial Magistrate reveals a shocking state of affairs. A senior police official has not only tried to interfere in the judicial functioning but has also threatened a Judicial Officer. The allegations made in the petition clearly make out a case of criminal contempt as the alleged action of the respondent not only scandalizes and lowers the authority of the Court but also prejudices and is a clear attempt to interfere with the due course of the judicial process.

Issue notice to the respondent returnable for 4th July, 2007 to show cause why action should not be taken against him under the Contempt of Courts Act, 1971 for having committed criminal contempt of the court of the Civil Judge (Junior Division)-cum-SDJM, Dalhousie. The respondent shall remain personally present in court on the next date and on all subsequent dates unless specifically exempted. The Registry is directed to hand over the notice alongwith copies of all the necessary documents to the learned Advocate General by 2.00 p.m. on 22.6.2007. The learned Advocate General shall ensure that notice is served upon the respondent.

The learned Advocate General has readily agreed to assist the Court on our request.

A copy of this order duly authenticated by the Court Secretary alongwith the copy of the entire paper book be handed over to the learned Advocate General by 5.00 p.m. today."

Thereafter, the respondent filed reply and he admitted that he did telephone the Judicial Officer concerned but according to him the conversation had taken place in a different context inasmuch as he was not trying to interfere in the judicial process nor he had asked the Judicial Magistrate to decide the matter in a particular manner. According to the contemner who is the Superintendent of Police, Chamba, some persons were arrested in connection with FIR No.68 of 2007. They were required to be produced before the Magistrate concerned. The case had political overtones and it was in these

circumstances that the contemner, apprehending that a law and order problem may arise, had telephoned the Magistrate.

On this, we had called for the comments of the SDJM concerned who has again reiterated that the respondent had spoken to him and had directed him not to grant bail. The Magistrate has stated that though he had told the Superintendent of Police that he would decide the case as per the record the respondent told him that he is a mere SDJM and should reject the bail application. Thereafter, the contemner has filed another affidavit tendering his unconditional and unqualified apology in which he has stated that dehors any explanation relating to the incident he once again tenders the unconditional and unqualified apology.

Shri R.L.Sood, learned senior counsel appearing for the contemner has submitted that he does not want to enter into any controversy with the Judicial Officer and that the contempt petition may be disposed of on the material on record.

We cannot accept the explanation put forth by the respondent. He had no business of ringing up a Judicial Officer. We have also no reason to disbelieve the Judicial officer who has stated in no uncertain terms that the contemner had asked him to reject the bail application. In a civilized country like ours where the rule of law must prevail we cannot allow any person, howsoever high he may be to try to influence the course of justice. We are, therefore, convinced that the respondent has committed criminal contempt since his action not only scandalizes and lowers the authority of the Court but is also a clear attempt to interfere with the due course of judicial process.

Leave aside trying to tell an officer not to grant bail, no police officer should even try to contact a Judicial Officer and talk to him about a case pending before the Judicial officer. If he has anything to say he must say it in open court or by moving any written application but he shall not talk directly on telephone to the Judicial officer. We therefore find the respondent guilty of having committed contempt of Court.

Coming to the question of punishment to be imposed we find that the respondent has thrown himself at the mercy of the Court. In the subsequent affidavit he has not tried to give any excuse for his action. This Court has always been very magnanimous in such cases. Contempt proceedings are initiated to uphold the majesty of law. It is not the intention to punish the contemnor unless such contemnor is not repentant. In this case the respondent has been appearing before us on each and every date and we have found that he is genuinely remorseful. He has not tried to give any unjust explanation and has thrown himself at the mercy of the Court.

Keeping all these facts into consideration we accept the apology tendered by the contemner and feel that no other punishment is warranted in the case. The contemner is however warned that he should be careful in future.

The petition is disposed of in the aforesaid terms.

(Deepak Gupta)
Judge

December 18, 2007
PV

(V.K. Ahuja)
Judge.